So far as the directions to the jury permitted them to have regard to the failure of the appellant to give evidence they clearly constitute a serious miscarriage of justice which requires the convictions for murder to be set aside. They also constitute a serious miscarriage of justice with respect to the charge of stealing the "Immanuel", notwithstanding that the appellant's unexplained possession of the boat was a matter to which the jury could have regard in reaching a verdict on that particular charge. Although the case on the charge of stealing may be described as a strong one, the verdict was not inevitable. Given the terms of the directions, the jury may well have proceeded on the basis that the appellant's failure to give evidence with respect to the whereabouts of Ms. Zack and Mr. Bayerl was a matter which could be taken into account in reaching a verdict on that charge. Accordingly, all three convictions must be quashed.

The appeal should be allowed. The judgment and order of the Court of Criminal Appeal should be set aside and in lieu thereof it should be ordered that the appeal to that court be allowed, the convictions quashed and a new trial ordered on all charges.

TRAVICE ALLAN EDWARDS

v.

THE QUEEN

HIGH COURT, AUSTRALIA
BRENNAN, DEANE, DAWSON, GAUDRON & McHUGH JJ.
[F.C. 93/052]
17 NOVEMBER 1993

EVIDENCE: Corroboration of a lie told in witness box by accused - Whether lying amounts to an implied admission of guilt - Directions to be given to jury in cases where a lie may amount to corroborative evidence of guilt - The weight to be attached to a piece of evidence that appears to be a lie - Whether it involves satisfaction of a standard of proof or merely amounts to evidence that affects credibility of a witness.

The appellant appeals against a conviction of procuring one Glen Edward Williams (Williams) to commit an act of gross indecency upon him "by threats and by fear of bodily harm". The incidence was alleged to have occurred whilst the appellant, Williams and other prisoners were being transported to a different location in a cramped van which had no facility for observation of the prisoners during the journey. It was William's complaint that several prisoners harassed and beat him in the van and the appellant promised to protect him if he (Williams) agreed to perform oral sex on the appellant.

The only evidence on the incident for the prosecution case came from Williams. For the defence case, the only evidence was from the appellant. The appellant denied the offence and in fact denied knowledge of the facts of the incident, i.e. the harassment by the other prisoners, stating that he looked the other way. However, later under cross-examination, his testimony indicated he had heard and seen something of the event. The appellant insisted he did not want to get involved as he might be classed as a dog by other prisoners and face consequences in prison.

The trial judge had warned the jury of the dangers of convicting on the uncorroborated evidence of Williams. He also indicated that the appellant's contradictions in testimony could be regarded as lies and that the lies told in the witness box by the appellant were "capable of corroborating ... the complainant's evidence." The learned judge then went on to list the four

requirements for the identification of lies in order to constitute corroborative evidence as defined in the case of *Reg. v. Lucas (Ruth)* [1981] QB 720 at 724.

The appellant challenged the directions to the jury. His argument amounted the saying that if a lie is to be treated as corroboration, it had to amount to an implied admission of guilt, and no admission of guilt should be acted on unless it be proved beyond reasonable doubt.

Held:

[1] Ordinarily, the telling of a lie will merely affect the credibility of a witness. However, in limited circumstances, a lie may amount to conduct which is inconsistent with innocence and amount to an implied admission of guilt. It could therefore constitute evidence which is corroboration provided it is not necessary to rely upon the evidence to be corroborated to establish the lie. In telling the lie, the accused must be acting as if he were guilty and furthermore the lie must relate to a material issue, in that it must have been necessary because if the truth had been told, the truth would have implicated the accused in the offence with which he is charged.

[2] Although guilt of the accused must ultimately be proved beyond all reasonable doubt, any alleged admission flowing from the telling of a lie may be considered together with the other evidence which as a whole must establish guilt beyond reasonable doubt if the accused is to be convicted. The telling of a lie may be accepted as evidence without the need to apply any particular standard of proof and be considered together with other evidence in concluding whether the accused is or is not guilty beyond any reasonable doubt.

[3] In the present case, one troubling aspect of the direction given by the trial judge is that it is difficult, if not impossible, to regard the appellant's evidence-in-chief as involving a deliberate lie. The answers given by him amounted at most to a lie about the extent of his observation or recollection and this goes to his credit and nothing else. Also, it is to be borne in mind the natural reluctance of the appellant to implicate those who were in custody with him. This explanation for the lie is so plausible that it should have prevented the trial judge from concluding that the telling of the lie was capable of amounting to corroboration of the complainant's evidence.

[4] The answers of the appellant relating to what he heard and saw bore no significance to what was alleged against him. As the lie went only towards these matters, it was not capable of revealing anything of the events constituting or bearing on the offence.

The jury should not have been invited to use the evidence of the appellant either as independent evidence of guilt or as evidence corroborating the account tendered by Williams and the directions have caused a serious miscarriage of justice.

Per Brennan J:

On the directions given by the trial judge, if the jury rejected the appellant's explanation that he did not desire to inculpate his co-prisoners, the inference was irresistible that the appellant could not account innocently for the incident in the van. On this hypothesis, the jury were entitled to act on the basis that William's evidence was corroborated by the appellant's conduct. On either basis, a conviction may be secured.

Per McHugh J:

The trial judge and jury had the opportunity to assess the demeanour of the accused, which opportunity is denied the appellate court. In this context, judging the appellant's evidence as a whole, it was open to the jury to conclude that the statements made by the accused did not merely amount to incautious statements which the appellant later was forced to qualify.

[Appeal allowed; conviction quashed].

Cases referred to:

Burgess [1956] 40 Cr. App. R. 144 ***(refd)***
Reg. v. Lucas (Ruth) [1981] QB 720 ***(refd)***
Reg. v. Perera [1982] VR 901 ***(refd)***
Lonergan v. The Queen [1963] Tas. SR 158 ***(refd)***
Eade v. The King [1924] 34 CLR ***(refd)***
Reg. v. Mullins [1848] 3 Cox CC 526 ***(refd)***
Doney v. The Queen [1990] 171 CLR 207 ***(refd)***
Edmunds v. Edmunds & Anor. [1935] VLR 177 ***(refd)***
Chamberlain v. The Queen [No. 2] [1984] 153 CLR 521 ***(refd)***
Shepherd v. The Queen [1990] 170 CLR 573 ***(refd)***
Peacock v. The King [1911] 13 CLR 619 ***(refd)***
Broadhurst v. The Queen [1964] AC 441 ***(refd)***
Smith v. NSW Bar Association [1992] 176 CLR 256 ***(refd)***

Jack v. Smail [1905] 2 CLR 684 ***(refd)***
Scott Fell v. Lloyd [1911] 13 CLR 230 ***(refd)***
Reg. v. Chapman [1973] QB 774 ***(refd)***
Steinberg v. Federal Commissioner of Taxation [1975] 134 CLR 640 ***(refd)***
Tumahole Bereng v. The King [1949] AC 253 ***(refd)***
Reg. v. Tripodi [1961] VR 186 ***(refd)***
Reg. v. Heyde [1990] 20 NSWLR 234 ***(refd)***
Reg. v. Boardman [1975] AC 421 ***(refd)***
Dearman v. Dearman [1908] 7 CLR 549 ***(refd)***
Reg. v. Evans [1985] 38 SASR ***(refd)***
Reg. v. Meskers, unreported, New South Wales Court of Criminal Appeal, 13 June 1991 ***(refd)***
M v. R, unreported, Court of Criminal Appeal of South Australia, 18 August 1993 ***(refd)***
Credland v. Knowler [1951] 35 Cr. App. R. 48 ***(refd)***
Tripodi v. The Queen [1961] 104 CLR 1 ***(refd)***
Buck [1982] 8 A Crim. R. 208 ***(refd)***
Reg. v. Preval [1984] 3 NSWLR 647 ***(refd)***
People v. Showers [1968] 440 ***(refd)***
Popovic v. Derks [1961] VR 413 ***(refd)***

Other sources referred to:
Can Lies Corroborate?, Heydon [1973] 89 Law Quarterly Review 552

For the appellant - Legal Aid Office (Queensland)
For the respondent - R.N. Miller, QC., Director of Prosecutions (Queensland)

JUDGMENT

Brennan J:

On 9 October 1989, 19 prisoners were transported in the back of a prison van from Woodford Correctional Centre near Brisbane to the Rockhampton Correctional Centre at Etna Creek. This was a day's journey, the first stage of a journey to Townsville. The prisoners were to stay overnight at Etna Creek. The van was divided into two by a partition, 10 prisoners on one side of the van, 9 on the other. Some of the prisoners were handcuffed individually, some were handcuffed to another prisoner. They were to sit on benches along either side of the van. The van was equipped with a portable toilet and a box containing some food and drink. The mode of transportation was barbarous: there were no means of supervising the prisoners in the van, nor were the prisoners let out of the van en route to Etna Creek. However, the Court was informed that the mode of transportation of prisoners in Queensland has since been changed and the present arrangements afford continuous supervision of prisoners being transported and frequent stops on lengthy journeys.

The appellant Edwards, who was one of the prisoners in the van, was convicted of procuring another of the prisoners, Glen Edward Williams, to commit an act of gross indecency upon him, the consent of Williams being obtained by threats and by fear of bodily harm. Williams gave evidence that he was hit by other prisoners and forced to commit acts of gross indecency upon them in the course of the journey. Then, he said, Edwards procured him to put Edwards' penis in his mouth by promising that he, Edwards, would protect Williams from further assaults. When the van arrived at Etna Creek, Williams was taken to the Rockhampton Base Hospital where he was found to be suffering from multiple soft tissue injuries, particularly of the head. There was no other evidence in the prosecution case which corroborated the evidence given by Williams.

Edwards gave evidence in his defence, denying that he had hit Williams during the journey to Etna Creek or that he had had anything at all to do with Williams during that journey. In the course of his evidence, this passage appears:

> Did you see anything happen in relation to Mr. Williams?
> There were things going on, but I just didn't worry about it.
>
> Why is that?
> I didn't want to get involved in it. If I had seen something I probably would have got the same treatment.

In cross-examination Edwards said:

> You say that things were going on in the van during the journey. That was over quite some considerable distance, wasn't it, that these things were going on?
> Yes.
>
> What was going on?
> I just didn't look. I looked the other way.
>
> Mr. Edwards, you have said that you didn't want to say anything because you might get beaten up?
> Yes. If you say anything in there you are classed as a dog and that means you get flogged, so that's why prisoners just mind their own business in there.
>
> It is difficult to look the other way for such a substantial time of the journey, isn't it?
> I looked over once or twice when it stopped. I shook my head and looked away.
>
> What did you see?
> He was just sitting there crying, that was it.
>
> Was he displaying any injuries?
> It looked like it.

...

Who was striking him?
I wouldn't have a clue.

...

... you agreed that over a substantial distance things were going on?
Yes.

Do you mean by that that the complainant was being assaulted?
I don't really know.

What do you mean, that things were going on?
Well, he would get - Williams would get pushed and Martin would lean up against me. I asked Martin to move up a little bit more. Every time I would turn around I would just see Williams crying or something.

So, at no stage along that entire trip did you actually see any blows struck at all?
No.

...

You weren't curious at all?
Seen too many beatings in gaol. I just don't look at them.

Well, presumably you didn't put your hand over your ears?
No.

What did you hear?
I just heard them calling him a dog and stuff like that.

Who was calling him a dog?
I couldn't tell you who it was.

Later in his cross-examination he gave evidence of having seen and heard something. He said:

Do you still say that at no stage over several hours did you ever see anybody touch Mr. Williams?
No.

Is that the truth or are you simply not wishing to be a dog?
That is the truth - at one stage I had seen Wallace, but that was about it. That was the only person.

This might be something fresh. What did you see about Wallace?
I just seen him push him. That was it.

...

Why didn't you tell us that before?
I don't know.

...

Why didn't you tell us that before that Wallace pushed Williams?
It only come back to me.

...

And the sound that you heard, was that sound like a punch or a slap? Do you know the difference in the sound?
Yes.

Which did it sound like?
It sounded like a slap.

And Wallace was leaning across?
Yes.

What about Williams at that time? Was he still seated on the bench?
He was half and half.

...

And I suggest you heard Wallace ... call out to him in these terms, or call out in these terms, 'Anyone who wants a head job, go down and see him'?
No.

And ... he said to Williams, 'You had better do it or you'll get bashed'?
No.

I am not suggesting those are the exact words but along that line?
I don't - couldn't really say if it was Wallace or not.

Did you hear the words being said?
Yes.

Tell us about this now. What did you hear there?
I just heard the words.

What did you hear?
'Whoever wants a head job, just come down here.'

Who said that?
I'm not sure.

...

So you were listening to what was being said?
Parts.

In the course of the summing up the learned trial judge gave the jury a direction that it was dangerous to convict Edwards on the uncorroborated testimony of Williams alone but he went on to direct them that if they were satisfied beyond reasonable doubt that Williams was telling the truth they were entitled to convict. It is arguable that, although a corroboration warning has ordinarily been given in the case of a sexual offence allegedly committed

between adult males (*Burgess* [1956] 40 Cr. App. R. 144), there was no necessity for such a warning to be given in the circumstances of the present case. However that may be, the case has been conducted throughout on the footing that a corroboration warning was necessary. The prosecution submitted that Edwards told lies in the witness box and that the telling of those lies corroborated Williams' evidence. The issue for determination on this appeal is whether the jury were properly directed as to the corroborative effect of Edwards' evidence.

The learned trial judge directed the jury that a lie told in the witness box is capable of corroboration if it fulfils four tests, being the tests stated by Lord Lane CJ in *Reg. v. Lucas (Ruth)* [1981] QB 720, at p. 724:

> To be capable of amounting to corroboration the lie told out of court must first of all be deliberate. Secondly it must relate to a material issue. Thirdly the motive for the lie must be a realisation of guilt and a fear of the truth. The jury should in appropriate cases be reminded that people sometimes lie, for example, in an attempt to bolster up a just cause, or out of shame or out of a wish to conceal disgraceful behaviour from their family. Fourthly the statement must be clearly shown to be a lie by evidence other than that of the accomplice who is to be corroborated, that is to say by admission or by evidence from an independent witness.

Although Lord Lane's observations relate to "the lie told out of court", a lie told in court may also provide corroboration (*ibid*., at p. 725; *Reg. v. Perera* [1982] VR 901, at p. 904). In principle, there is no basis for distinguishing between the effects of testimonial and non-testimonial lies. In either case, the falsity must be proved by evidence other than the evidence to be corroborated. In the case of conflict between the evidence to be corroborated and a testimonial statement by an accused which the prosecution asserts to be false, the conflict may appear to resolve itself into a mere question of credibility of opposing witnesses. Yet it would be wrong to hold that the evidence of one witness is corroborated because it induces the tribunal of fact to believe that the contrary evidence of the other is false and the falsity of the latter evidence affords corroboration. A witness cannot corroborate his or her own evidence (*Lonergan v. The Queen* [1963] Tas. SR 158, at p. 164).

Counsel for the appellant accepted Lord Lane's four tests but attacked the manner in which the learned trial judge applied those tests to the facts of the case. If Lord Lane's four tests were to be applied - a question to which I shall shortly turn - there was no legitimate ground for attacking the application of the first two tests. If Edwards was telling a lie in denying what he had seen and heard in the narrow confines of the van, the jury had ample grounds for concluding that the lie was both deliberate and related to a material issue, namely, the violence being done or offered to Williams. The appellant's first substantial objection to the summing up was to the alleged omission by the trial judge to draw the jury's attention to all the innocent explanations which might have accounted for the telling of a lie by Edwards. The trial judge did draw the jury's attention to Edwards' stated desire not to "dob people in" but he did not embellish that observation. No embellishment by the learned trial judge was needed. Nor was there any request at the trial for a further direction to be given about those explanations.

The chief argument advanced by the appellant was that the jury should have been directed not only that they had to be satisfied by evidence other than Williams' evidence that Edwards had told a deliberate lie in his evidence because of a realization of guilt and a fear of the truth, but also that they had to be so satisfied beyond a reasonable doubt. If a lie is to be treated as corroboration, so the argument ran, it had to amount to an implied admission of guilt and no admission of guilt should be acted on unless it be proved beyond a reasonable doubt. To consider this argument, it is necessary to determine whether Lord Lane's four tests provide the appropriate approach to the evaluation of evidence that is said to contain a lie and that is relied on to corroborate the evidence of another witness.

There is some inherent circularity in the third of Lord Lane's tests. If the jury must be satisfied that the motive for the lie is a realization of guilt and a fear of the truth, the jury must be satisfied that there is guilt to be realized before it decides whether to treat the supposed lie as corroboration of other inculpatory evidence. If the jury is satisfied of the accused's guilt, it would be unnecessary to consider whether his evidence is corroborative of evidence tending to prove his guilt. The third test is inappropriate. The relevant inference is not that the accused realized his guilt but that, in making his statement, he was unable to account innocently for the

evidence that has been given against him. That approach appears in *Eade v. The King* [1924] 34 CLR 154, at p. 158, where Knox CJ, Gavan Duffy and Starke JJ. said:

> Now, if a jury be of opinion that the prisoner's statements are false, then they may properly come to the conclusion that his falsehood indicates that the child's story is true, and that he is telling lies in order to discredit the evidence of the other witnesses because he is unable to account for what they say they saw, in any way consistent with his own innocence. Corroboration may be found in independent evidence or in admissions of the prisoner, or in inferences properly drawn from his conduct and statements. And it is, in our opinion, for the jury in the present case to say what complexion the conduct and statements of the prisoner bear.

When a jury places an adverse complexion on the conduct and statements of an accused and comes to the view that he is unable to account innocently for the evidence given against him, the jury may act with more confidence on the evidence which is sought to be corroborated. They are entitled to say: although it would otherwise be dangerous to convict on the evidence to be corroborated, the accused is unable to account innocently for the facts revealed by that evidence and it is therefore safe to act on it. In *Reg. v. Mullins* [1848] 3 Cox CC 526, at p. 531, Maule J. pointed out that evidence might "be confirmed by the absence of contradiction, when if untrue, contradiction might be easily afforded". Of course, this is not to say that some evidentiary onus is placed on an accused to give evidence to contradict the case against him but, if he chooses to give evidence in contradiction of the evidence to be corroborated and his contradiction is a lie, the jury may regard the telling of the lie as confirming the credibility of the witness whose evidence is to be corroborated.

In considering whether an accused has lied because he is unable to account innocently for the evidence of the witness to be corroborated, the jury are engaged in assessing the credibility of that witness as a preliminary to the finding of the material facts. No question of proof to a particular standard governs the assessment of credibility. The jury are not then using the accused's evidence as conduct which is itself probative of guilt. In *Doney v. The Queen* [1990] 171 CLR 207, at p. 211 this Court said:

> It is not necessary that corroborative evidence, standing alone, should establish any proposition beyond reasonable doubt. In the case of an accomplice's evidence, it is sufficient if it strengthens that evidence by confirming or tending to confirm the accused's involvement in the events as related by the accomplice.

Standards of proof become relevant to the finding of the facts on which the verdict depends - the facts constituting the elements of an offence or, in the case of insanity and some other exceptions, the elements of a defence and, where those facts are matters of inference, the facts from which the inference might be drawn. But the jury should not be directed that the corroborative effect of the making of a false statement by an accused depends on a finding beyond reasonable doubt either of its falsity or of the reason for making the false statement.

It is sufficient that the jury be told that, if they form the view on the evidence other than the evidence to be corroborated that the accused has told a deliberate and material lie and that he did so because he was unable innocently to account for the facts revealed in the evidence to be corroborated, the jury is entitled to regard the telling of the lie as corroboration of that evidence. It then remains for the jury to find the facts upon which the verdict depends. It is at that stage that the question of standard of proof arises.

However, if the prosecution seeks to rely on the telling of the lie as an admission of guilt and invites the jury to treat that evidence as an independent proof of guilt, the prosecution bears the same onus as it bears whenever it relies on an alleged confession as an independent proof of guilt. It must prove beyond reasonable doubt that a confession of guilt was made.

Whether the making of a statement proved to be false is capable of amounting to a confession depends on the terms of the statement, the circumstances in which it is made, the nature of the offence charged and the other evidence in the case. It may be that in some cases the falsity of a statement which is exculpatory in terms could give to the accused's conduct the character of a confession, but such a confession would be an admission by conduct. When the supposed admission consists in the making of a false denial of guilt, the prosecution is hard put to turn the denial into an admission. As Lowe J. said in *Edmunds v. Edmunds and Ayscough* [1935] VLR 177, at p. 186:

> [B]y no torturing of the statement 'I did not do the act' can you extract the evidence 'I did do the act.'

Burbury CJ was equally cautious in *Lonergan v. The Queen* [1963] Tas. SR, at p. 160:

> The jury must clearly understand that it is only within strict limits that false statements and denials may be relied upon as independent proof of the affirmative of the issue.

If the prosecution were to rely on the telling of a lie as an independent proof of guilt, the jury would have to be directed that, in order to convict on that basis, they must be satisfied beyond reasonable doubt that the true inference to be drawn from the accused's conduct is that he has confessed his guilt. In such a case, the jury would have to be satisfied beyond reasonable doubt as to Lord Lane's third test, for the accused's conduct could not otherwise amount to a confession of guilt. It would surely be a rare case in which it would be permissible to infer beyond reasonable doubt that an accused, by telling a lie, has confessed his guilt. Generally, the jury is directed that the accused should not be convicted merely because he has told a lie.

The telling of a lie by an accused is frequently relied on as a piece of evidence tending to inculpate the accused in the offence charged. The jury must consider the weight to be given to that evidence, but the weight of particular pieces of evidence does not involve a standard of proof. The relevant standard of proof governs the making of a finding of material fact on the pieces of evidence which logically, if not chronologically, the jury has already evaluated. The standard directions given by judges to juries in criminal cases distinguish (perhaps without consciously adverting to the distinction) between the evaluation of evidence and the finding of material facts. Recognition of this distinction goes a long way towards avoiding whatever misunderstanding there may be about the majority judgments in *Chamberlain v. The Queen [No. 2]* [1984] 153 CLR 521 relating to the drawing of an inference of guilt.

The drawing of an inference is part of the process of finding material fact: if it be right to say that no inference of guilt can be drawn unless the jury is satisfied that reasonable hypotheses consistent with innocence are excluded, the jury must be satisfied beyond reasonable doubt as to the facts from which the inference is drawn and on which the validity of the inference necessarily depends. It is logically impossible to be satisfied beyond reasonable doubt that an inferred fact exists without being satisfied beyond reasonable doubt of the existence of those facts from which the inference is drawn. If the emergence of an accused from the scene of the murder holding a smoking gun is the only evidence offered in proof of guilt, the case against him fails if there be a reasonable doubt about the identity of the person seen or the place where the fatal shot was fired or that the thing held by the accused was a smoking gun. There can be no superstructure erected without the foundations needed to support it. That is what the majority in *Chamberlain [No. 2]* said, but the proposition embraced by the majority was a proposition of logic rather than of law. To apply the proposition, precision in identification of the inference to be drawn and of the facts from which it can be drawn is essential, especially in a case where an inference of guilt is said to arise from a number of facts which are not themselves established beyond reasonable doubt. In such a case, it is essential to identify the foundation of fact from which such an inference might be drawn. It cannot be drawn from particular facts the existence of which is established only on the balance of probabilities, for it is a reasonable hypothesis that some or all of the facts on which the inference depends do not exist. If a guilty inference is to be drawn, it must be based on the concatenation of probabilities itself. The existence of a concatenation of probabilities may exclude an innocent hypothesis - it depends on the nature, number and relationships of the probabilities - but the concatenation of probabilities is the fact on which the guilty inference must be based. *Chamberlain [No. 2]* was not a case of this kind: there the prosecution contended for an inference of guilt based on one or more discrete facts (such as the presence of foetal blood in the accused's car or the cutting of the baby's clothing by human hand). The inference of guilt could not have been drawn if the fact or facts on which it had to be based were not proved to the jury's satisfaction beyond reasonable doubt.

The problem of an absence of a uniform nomenclature by which to distinguish between a fact to be inferred, the facts from which the inference is drawn and the evidence was addressed in the analysis of the *Chamberlain [No. 2]* judgments which Dawson J. made in *Shepherd v. The Queen* [1990] 170 CLR 573. His Honour referred to a passage in the judgment of Gibbs CJ and Mason J. in *Chamberlain [No. 2]* [1984] 153 CLR, at p. 559 in which their Honours were

considering the sufficiency of evidence safely to establish that there was foetal blood in the accused's car. Dawson J. said ([1990] 170 CLR, at p. 583):

> There were various items of evidence upon which the Crown relied to establish the intermediate fact - their Honours refer to it as a primary fact - that the blood, if any, in the car was foetal blood. Their Honours do not suggest that each of those items was required to be proved beyond reasonable doubt. But the intermediate fact, if it was to be the basis of an inference or inferences leading to a verdict of guilty, was required to be proved beyond reasonable doubt. I do not understand their Honours to have said any more than that.

His Honour thus distinguished between evidence, intermediate facts, and inference based on intermediate facts. After citing a passage from my judgment in *Chamberlain [No. 2]* [1984] 153 CLR, at p. 599, Dawson J. said ([1990] 170 CLR, at p. 584):

> In that passage the reference to 'the primary facts from which the inference of guilt is to be drawn' is clearly a reference to such intermediate conclusions of fact as are **necessary** for the drawing of the inference of guilt and is not a reference to each basic fact - each individual item of evidence - upon which those conclusions may be based. ... The term 'primary facts' is apt to confuse if it is used to refer to the basic facts - the individual items of evidence - as well as to the factual conclusions from which inferences may be drawn.
>
> (Emphasis added.)

Adopting his Honour's nomenclature, *Chamberlain [No. 2]* requires that no element of the offence be inferred adversely to an accused unless the intermediate facts from which the inference is drawn be proved beyond reasonable doubt. But, as *Shepherd* holds, *Chamberlain [No. 2]* imposed no requirement that the jury accept beyond reasonable doubt every piece of inculpatory evidence relevant to the existence of an intermediate fact. The evaluation of evidence is a matter for each juror to approach in the light of his or her experience of life but the standard of proof beyond reasonable doubt governs the finding of facts essential to the guilt of the accused on the offence charged. The pieces of evidence are "strands in a cable" tending to establish a material fact, but intermediate facts established by evidence are links in the chain of proof of the fact to be inferred (*ibid.*, at p. 579). The standard of proof applies to links; it says nothing about the strands.

If the ultimate facts - those which constitute the elements of the offence charged - are to be inferred from intermediate facts, the standard governs both the finding of the intermediate facts and the drawing of the inference from them. Again, this is a proposition of logic flowing from the legal rule that the prosecution bears the onus of proving guilt beyond reasonable doubt. The logical proposition must control what is said in a summing up by the trial judge, but the trial judge does not have to expound the proposition to the jury in every case. Sometimes it is necessary to direct the jury to apply the standard of proof specifically to the finding of the intermediate facts (as in *Chamberlain [No. 2]*) or to the drawing of an inference from them (as in *Peacock v. The King* [1911] 13 CLR 619, at pp. 634, 651-652, 662) but it is often sufficient to give a direction that applies the standard of proof to the general finding of guilt. What is erroneous is a direction that the standard of proof governs the jury's evaluation of pieces of evidence (*Shepherd* [1990] 170 CLR, at p. 585).

Where the telling of what the prosecution alleges to be a lie is not relied on as a confession of guilt, the accused's conduct in making the statement in which the alleged lie is told nevertheless may be evidence relevant to his guilt. The jury may be able to infer guilt from the making of the statement **and** from the surrounding circumstances. In such a case, the making of the statement is not necessarily advanced as corroboration of another witness - it may be a case where no question of corroboration arises - but it is advanced as one piece of evidence among others from which the jury is invited to act in finding facts adverse to an accused. That was the kind of case to which Lord Devlin's remarks in *Broadhurst v. The Queen* [1964] AC 441, at p. 457 were directed:

> It is very important that a jury should be carefully directed upon the effect of a conclusion, if they reach it, that the accused is lying. There is a natural tendency for a jury to think that if an accused is lying, it must be because he is guilty, and accordingly to convict him without more ado. It is the duty of the judge to make it clear to them that this is not so. Save in one respect, a case in which an accused gives untruthful evidence is no different from one in which he gives no evidence at all. In either case the burden remains on the prosecution to prove the guilt of the accused. But if upon the proved facts two inferences may be drawn about the accused's conduct or state of mind, his untruth-

> fulness is a factor which the jury can properly take into account as strengthening the inference of guilt. What strength it adds depends, of course, on all the circumstances and especially on whether there are reasons other than guilt that might account for untruthfulness.

In the present case, the jury were entitled to conclude on the basis of Edwards' evidence and demeanour in the witness box that his evidence about what he had seen and heard in the van was false. The jury might have come to the view that his motive for telling a lie was a fear of "dobbing people in", but they were entitled to come to the view that that was not Edwards' reason for making a false statement. However, if the jury came to the latter view, in what way was the telling of a lie material to proof of Edwards' guilt? There was nothing in the evidence which would have entitled the jury to find beyond reasonable doubt that Edwards, in telling the lie, had confessed that he had procured Williams to commit an act of gross indecency upon him. Nor was the making of a false statement by Edwards advanced as a fact from which, in conjunction with other facts, an inference of guilt could be drawn. The telling of a lie in evidence was advanced merely as corroborative of Williams' evidence. The case against Edwards rested entirely on the jury's assessment of the credibility of Williams and Edwards' alleged lie was advanced to strengthen Williams' credibility.

The direction given by the learned trial judge to the jury was a direction as favourable to the appellant as the appellant might have received on the question of corroboration. The jury were told that, even though they were satisfied that Edwards had lied in refraining from disclosing initially what he had seen and heard in the van, the third test propounded by Lord Lane might not be found to be satisfied. His Honour said:

> if you are again left with that reasonable possibility that his motive was one of not dobbing people in, ... then it is a matter where the Crown have not established whether the motivation was a realisation of guilt and an endeavour to hide guilt.

In other words, the jury were told that if it was reasonably possible that Edwards had refrained from disclosing what he had seen and heard in the van because he did not want to dob people in, there was no evidence to corroborate Williams' evidence. Although the direction based on Lord Lane's third test was inappropriate to the question of corroboration, a direction in the terms stated could not have produced any miscarriage of justice.

On the directions given them by the trial judge, the jury must have been satisfied beyond reasonable doubt of Edwards' guilt on one of two bases: either it was safe to act on the uncorroborated evidence of Williams or Williams' evidence was corroborated by Edwards' conduct in the witness box. If the jury were of the view that Edwards' conduct was not possibly to be explained by a desire not to dob people in, the inference was irresistible that Edwards could not account innocently for what had happened to Williams in the van. On that hypothesis, the jury were entitled to act on the basis that Williams' evidence was corroborated by Edwards' conduct. On either basis the jury were entitled to convict.

The appeal should be dismissed.

Deane, Dawson & Gaudron JJ:

The appellant, Travice Allan Edwards, stands convicted of procuring Glen Edward Williams to commit an act of gross indecency upon him "by threats and by fear of bodily harm". The act of gross indecency was particularized in the indictment as "bringing into contact the mouth of the said Glen Edward Williams and the genitalia of the [appellant]".

The charge arose out of events which occurred during the transportation, in a prison van, of about 19 prisoners from Woodford Correctional Centre near Brisbane to the Rockhampton Correctional Centre at Etna Creek. The disturbing details of that journey are set out in the judgment of Brennan J.

The prosecution case was that Williams had been beaten by several prisoners in the van and forced to commit various acts of indecency upon them, when Edwards procured the act of indecency charged by promising Williams that, in return for oral sex, he would protect him from further bashings. The only prosecution evidence of these events was that given by Williams.

The only evidence in the defence case was that of the appellant. He gave evidence denying the offence and, as well, denying anything but a vague, general knowledge of the events in the van. He said that "[t]here were things going on, but [he] just didn't worry about it", explaining

that he "didn't want to get involved" because "[i]f [he] had seen something [he] probably would have got the same treatment."

During cross-examination, the appellant said that he "just didn't look" or "looked the other way" during the beatings of Williams, but then admitted that he "looked over once or twice when it stopped". He said that he then saw Williams "just sitting there crying". He denied that he saw any blows struck, again explaining that he "didn't want to get involved" because he had "[s]een too many beatings in gaol" and he "just [did not] look at them". He admitted, however, that he heard various things and "heard them calling [Williams] a dog and stuff like that". He said that he heard thumps and "when the thumps stopped [he] would turn around and have a quick look and then [he] would turn back".

Towards the end of his cross-examination, the appellant was asked whether he had seen "anybody touch Mr. Williams". Initially he said that he had not, but immediately afterwards said that he had "seen Wallace, but that was about it". On further questioning he said that he had "just seen [Wallace] push him. That was it." He said he had not told anyone that before because "[i]t only come back to me" [sic]. He then remembered that he had heard two thumps, "[j]ust like slaps", when he looked around and saw Wallace. He admitted also that he heard someone say, "Whoever wants a head job, just come down here", but could not say that the speaker was Wallace. He said he was not sure who it was.

The trial and subsequent appeals, including the appeal to this Court, were conducted on the basis that it would have been dangerous for the jury to convict on the uncorroborated evidence of Williams. The trial judge gave a warning to that effect and instructed the jury that they could regard the lies told by the appellant in the witness box on oath as "capable of corroborat[ing] ... the complainant's evidence". His Honour indicated that the lies were told "when he first went into the witness-box [and] said ... that things were going on but he took no notice and ... could give ... no more information than that" and that they were established by his later admissions during cross-examination "that he saw and heard what must have been physical aggression towards the complainant and the words", "Whoever wants a head job, just come down here". The jury were further instructed that they could only consider the lies to be corroboration if they satisfied the four requirements identified in *Reg. v. Lucas (Ruth)* [1981] QB 720, at p. 724, namely, that the lies must:

(1) be deliberate;
(2) relate to a material issue;
(3) spring from "a realisation of guilt and a fear of the truth"; and
(4) be clearly shown to be lies by evidence other than that to be corroborated.

There is a difference between the mere rejection of a person's account of events and a finding that a person has lied (*Smith v. NSW Bar Association* [1992] 176 CLR 256, at p. 268. See also *Jack v. Smail* [1905] 2 CLR 684, at p. 698; *Scott Fell v. Lloyd* [1911] 13 CLR 230, at p. 241; *Reg. v. Chapman* [1973] QB 774, at p. 780). A lie is a deliberate untruth. To conclude that a statement is a lie is to conclude that the truth lies elsewhere. In some circumstances, a finding that a person lied will necessarily involve acceptance of the contrary (*Steinberg v. Federal Commissioner of Taxation* [1975] 134 CLR 640, per Gibbs J. at p. 694, cf. per Barwick CJ. at p. 684. See also *Broadhurst v. The Queen* [1964] AC 441, at p. 457). However, the fact that a person has lied does not of itself establish a specific contrary proposition (See *Edmunds v. Edmunds and Ayscough* [1935] VLR 177, at p. 186 where Lowe J. said that "by no torturing of the statement 'I did not do the act' can you extract the evidence 'I did do the act' ").

Ordinarily, the telling of a lie will merely affect the credit of the witness who tells it. A lie told by an accused may go further and, in limited circumstances, amount to conduct which is inconsistent with innocence, and amount therefore to an implied admission of guilt. In this way the telling of a lie may constitute evidence. When it does so, it may amount to corroboration provided that it is not necessary to rely upon the evidence to be corroborated to establish the lie. At one time it was thought that only a lie told out of court could amount to an implied admission (*Tumahole Bereng v. The King* [1949] AC 253, at p. 270; *Reg. v. Chapman* [1973] QB, at pp. 783-784), but the distinction is not logically supportable and is no longer drawn (*Eade v. The King* [1924] 34 CLR 154, at p. 158; *Reg. v. Tripodi* [1961] VR 186, at pp. 193-194; *Reg. v. Perera* [1982] VR 901, at pp. 904-905; *Reg. v. Heyde* [1990] 20 NSWLR 234, at pp. 236, 241; *Reg. v. Boardman* [1975] AC 421, at pp. 428-429; *Reg. v. Lucas (Ruth)* [1981] QB. at pp. 724-725;

Heydon, "**Can Lies Corroborate?**", [1973] 89 Law Quarterly Review 552). When the telling of a lie by an accused amounts to an implied admission, the prosecution may rely upon it as independent evidence to "convert what would otherwise have been insufficient into sufficient evidence of guilt" (*Dearman v. Dearman* [1908] 7 CLR 549, per Griffith CJ at p. 555) or as corroborative evidence.

But not every lie told by an accused provides evidence probative of guilt. It is only if the accused is telling a lie because he perceives that the truth is inconsistent with his innocence that the telling of the lie may constitute evidence against him (*Eade v. The King* [1924] 34 CLR, at p. 158). In other words, in telling the lie the accused must be acting as if he were guilty. It must be a lie which an innocent person would not tell. That is why the lie must be deliberate. Telling an untruth inadvertently cannot be indicative of guilt. And the lie must relate to a material issue because the telling of it must be explicable only on the basis that the truth would implicate the accused in the offence with which he is charged. It must be for that reason that he tells the lie. To say that the lie must spring from a realization or consciousness of guilt is really another way of saying the same thing. It is to say that the accused must be lying because he is conscious that "if he tells the truth, the truth will convict him" (*Reg. v. Tripodi* [1961] VR, at p. 193).

It was argued by the appellant that the requirement laid down in *Reg. v. Lucas (Ruth)* that the motive for the lie must be "a realisation of guilt and a fear of the truth" involves circular reasoning. It was said that, in satisfying the requirement, the jury must conclude that the accused was guilty before it can use the telling of a lie by him as evidence against him. Since a conclusion of guilt can only be reached if it is proved beyond all reasonable doubt, it was said that the ultimate question must be answered before the jury come to consider the lie and that would render its consideration unnecessary (cf. *Reg. v. Evans* [1985] 38 SASR 344, at p. 347-348; *Reg. v. Heyde* [1990] 20 NSWLR, at p. 244, now qualified by *Reg. v. Meskers*, unreported, New South Wales Court of Criminal Appeal, 13 June 1991, per Wood J. at p. 40, in the light of *Shepherd v. The Queen* [1990] 170 CLR 573). By a similar process it might be argued that the requirement that the lie must relate to a material issue involves circular reasoning.

But in truth there is no circularity of the kind suggested. It is convenient to confine ourselves to the requirement that there be a consciousness of guilt, but the game analysis is applicable to the requirement that the lie relate to a material issue. Although guilt must ultimately be proved beyond all reasonable doubt, an alleged admission constituted by the telling of a lie may be considered together with the other evidence and for that purpose does not have to be proved to any particular standard of proof. It may be considered together with the other evidence which as a whole must establish guilt beyond reasonable doubt if the accused is to be convicted (See *Shepherd v. The Queen* [1990] 170 CLR 573). If the lie said to constitute the admission is the only evidence against the accused or is an indispensable link in a chain of evidence necessary to prove guilt, then the lie and its character as an admission against interest must be proved beyond reasonable doubt before the jury may conclude that the accused is guilty. But ordinarily a lie will form part of the body of evidence to be considered by the jury in reaching their conclusion according to the required standard of proof. The jury do not have to conclude that the accused is guilty beyond reasonable doubt in order to accept that a lie told by him exhibits a consciousness of guilt. They may accept that evidence without applying any particular standard of proof and conclude that, when they consider it together with the other evidence, the accused is or is not guilty beyond reasonable doubt.

There is, however, a difficulty with the bare requirements in *Reg. v. Lucas (Ruth)* that a lie must be material and that it must be told from a consciousness of guilt. Again it is convenient to confine ourselves to that last requirement. A bare direction that consciousness of guilt is required does not provide sufficient guidance as to what matters indicate its presence. Unexplained, such a direction allows the jury to decide, in the light of all the evidence, that a lie was told with a consciousness of guilt and then to use that finding to corroborate some part of the evidence that led to the finding of a consciousness of guilt.

A lie can constitute an admission against interest only if it is concerned with some circumstance or event connected with the offence (i.e. it relates to a material issue) and if it was told by the accused in circumstances in which the explanation for the lie is that he knew that the

truth would implicate him in the offence. Thus, in any case where a lie is relied upon to prove guilt, the lie should be precisely identified, as should the circumstances and events that are said to indicate that it constitutes an admission against interest (See *M v. R*, unreported, Court of Criminal Appeal of South Australia, 18 August 1993, at pp. 4-5). And the jury should be instructed that they may take the lie into account only if they are satisfied, having regard to those circumstances and events, that it reveals a knowledge of the offence or some aspect of it (See, e.g. *Credland v. Knowler* [1951] 35 Cr. App. R. 48; *Tripodi v. The Queen* [1961] 104 CLR 1, at p. 10; *Buck* [1982] 8A Crim. R. 208, at p. 214; *Reg. v. Preval* [1984] 3 NSWLR 647, at pp. 650-651; *Reg. v. Evans* [1985] 38 SASR, at pp. 348-349; *People v. Showers* [1968] 440 P. 2d 939, at p. 942) and that it was told because the accused knew that the truth of the matter about which he lied would implicate him in the offence, or, as was said in *Reg. v. Lucas (Ruth)*, because of "a realisation of guilt and a fear of the truth".

Moreover, the jury should be instructed that there may be reasons for the telling of a lie apart from the realization of guilt (See e.g. *Lonergan v. The Queen* [1963] Tas. SR 158, at p. 160; *Broadhurst v. The Queen* [1964] AC, at p. 457). A lie may be told out of panic, to escape an unjust accusation, to protect some other person or to avoid a consequence extraneous to the offence. The jury should be told that, if they accept that a reason of that kind is the explanation for the lie, they cannot regard it as an admission. It should be recognized that there is a risk that, if the jury are invited to consider a lie told by an accused, they will reason that he lied simply because he is guilty unless they are appropriately instructed with respect to these matters. And in many cases where there appears to be a departure from the truth it may not be possible to say that a deliberate lie has been told. The accused may be confused. He may not recollect something which, upon his memory being jolted in cross-examination, he subsequently does recollect.

If the telling of a lie by an accused is relied upon, not merely to strengthen the prosecution case, but as corroboration of some other evidence, the untruthfulness of the relevant statement must be established otherwise than through the evidence of the witness whose evidence is to be corroborated. If a witness required to be corroborated is believed in preference to the accused and this alone establishes the lie on the part of the accused, reliance upon the lie for corroboration would amount to the witness corroborating himself. That is a contradiction in terms.

One troubling aspect of the direction given by the trial judge in this case is that it is difficult, if not impossible, to regard the appellant's evidence-in-chief as involving a deliberate lie. True it is that towards the end of his cross-examination, the appellant indicated a knowledge of some particular events in the van which had not been mentioned in his evidence-in-chief. But that seems to have been the result of the questions asked. Certainly, questions directed to beating, bashing or the striking of blows, as asked in his evidence-in-chief, do not necessarily invite the same answer as does a question about touching, as asked in the last part of his cross-examination. And the acknowledgment by the appellant in that last part of his cross-examination that he saw Wallace touch and push Williams is the only matter that, we think, is even arguably inconsistent with the appellant's account that he deliberately refrained from ascertaining what was going on and, thus, did not know who said or did what.

Even if the matter is approached on the basis that the answers given by the appellant during his cross-examination revealed that he lied in his evidence-in-chief, the lie thus revealed was not a lie with any probative value. The lie, if it was one, was not about the occurrence of the beatings and acts of indecency between Williams and other prisoners in the van, but about precisely what the appellant saw and heard of those events and his knowledge as to who participated in them and in what way. If the appellant had falsely denied that the events about which he was asked had occurred, that might have amounted to a lie about a material issue. And because the prosecution would appear to have relied upon the violent treatment of the complainant by others as the means by which the appellant procured the complainant's consent to the act of gross indecency, the appellant's knowledge of that violence may have been a material issue. But the matter was not put by the trial judge in this way. As it was put, the answers given by the appellant amounted at most to a lie about the extent of his observation or recollection and that was something that went to his credit and nothing else.

Furthermore, the reluctance of the appellant to recall any more than he was compelled to do in cross-examination occurred in a situation in which the appellant had been in custody and did not wish to inculpate others who were in custody with him - to be a "dog" in prison terminology. That was not questioned by the prosecution as a motive for withholding the truth, indeed the prosecution suggested it. Whilst in many cases it must be a question for the jury whether a lie was told because the truth was perceived to be inconsistent with innocence or for some other reason, if it was established that there was a deliberate lie in this case about a material matter (and we do not think that it was), the innocent explanation for that lie was so plausible that the lie could not have been probative of guilt. Quite apart from our concerns about the existence of the lie and its materiality, this should have prevented the trial judge from concluding that the telling of the lie was capable of amounting to corroboration of the complainant's evidence.

On a proper analysis of the evidence, the appellant denied neither the occurrence of the events in the van nor his knowledge of the nature of those events. His cross-examination was not directed to those matters. The most that was established by his cross-examination was that, contrary to his evidence-in-chief that he turned away and did not look to see what was going on, on a few occasions he did look around and, on one occasion, saw Wallace push Williams and, at or about the same time, heard thumps or slaps.

The precise details of what the appellant saw and heard and the identity of those who participated in particular events had no significance at all in relation to what was alleged against him. Because the lie went only to those matters, it was not capable of revealing anything of the events constituting or bearing on the offence. More particularly, it was not capable of revealing anything of the appellant's knowledge or state of mind with respect to those events.

In assessing the weight to be given to the appellant's testimony *vis-a-vis* that of Williams, the jury was, of course, fully entitled to take account of any reluctance on the part of the appellant to answer questions responsively and of any variations or perceived inconsistencies between his answers. But they should not have been invited to use the evidence of the appellant either as independent evidence of guilt or as evidence corroborating the account given by Williams. In the circumstances, there was a serious miscarriage of justice. The appeal must be allowed and the conviction quashed. The appellant has served the term of imprisonment to which he was sentenced (the non-parole period having expired at the time of the hearing of the appeal) and there is no occasion for a retrial.

McHugh J:
In my opinion, the appeal should be dismissed.

In assessing the effect of the various statements in the accused's evidence, it should not be forgotten that the learned trial judge and the jury had an opportunity, denied to an appellate court, of judging the demeanour of the accused. When that advantage is borne in mind and the evidence of the accused is read as a whole, I think that it was open to the jury to conclude, in the words of Thomas J. in the Court of Criminal Appeal, that the accused's evidence "changed from a profession of complete ignorance of any relevant detail to an admission of knowledge of a number of relevant details". I also think that it was open to the jury to conclude that the statements initially made by the accused were not simply incautious statements "which the accused was later forced to qualify" as in *Reg. v. Heyde* [1990] 20 NSWLR 234, at p. 236.

The jury were entitled to conclude that the accused lied about his knowledge of some of the relevant details including the statement "Whoever wants a head job, just come down here". If the jury concluded that he lied about these details, it would have been open to them to conclude that he lied because he was unable to give any innocent explanation or account for what happened after the incidents occurred and those words were said. The statement "Whoever wants a head job, just come down here" was an invitation to the accused and other prisoners to engage in sexual activity with the complainant. The jury could conclude that the only reason that the accused lied about his knowledge of that invitation was because he was conscious of the fact that he had accepted the offer. Similarly, the jury could conclude that the only reason that he had lied about his knowledge of seeing any incidents concerning the complainant was that he was conscious of the fact that he had taken advantage of what had occurred to the complainant to procure the performance of an act of oral sex on himself.

The words and incidents which the accused ultimately admitted were material facts which were part of the chain of proof against him. Standing by themselves, they did not implicate the accused even though they were alleged to be part of an escalating course of conduct which culminated in the accused accepting the invitation and procuring the complainant to perform oral sex on him. The accused could have admitted to knowledge of the incidents and the invitation without implicating himself. But once he lied about his knowledge of them, they wore a different and incriminating complexion so far as he was concerned. Of course, the case of corroboration would have been much stronger if the accused had denied, and later admitted, that the incidents occurred or the invitation had been made. If that had happened, it would have been open to the jury to hold that he lied in order to discredit the complainant's evidence because he was unable to offer any innocent account of what occurred after the statement (*Evade v. The King* [1924] 34 CLR 154, at p. 158).

But even though the accused did not positively deny the occurrence of the incidents or the making of the invitation, I think that the jury was entitled to conclude that he lied about his knowledge of them and that his lie or lies gave the incidents and the invitation a "suspicious or sinister character" (*Popovic v. Derks* [1961] VR 413, at p. 429) which made them corroborative of the evidence of the complainant.

But did the learned trial judge misdirect the jury as to the tests for determining whether the lies of the accused constituted corroboration of the complainant's evidence? The learned judge substantially directed the jury in accordance with the law as it was laid down in *Reg. v. Lucas* (Ruth) [1981] QB 720. In *Lucas*, Lord Lane CJ, giving the judgment of the Court of Appeal, said that to constitute corroboration a lie must satisfy four conditions (*ibid*., at p. 724):

1. It must be deliberate.
2. It must relate to a material issue.
3. The motive for the lie must be a realisation of guilt and a fear of the truth.
4. The statement must be clearly shown to be a lie by admission or by evidence from a person other than the person whose evidence has to be corroborated.

The chief submission of counsel for the accused was that the accused's lies were "a species of admission by conduct" and that his Honour had failed to direct the jury that the Crown had to prove the admission beyond reasonable doubt. However, the lies were not relied on as an admission of guilt but as corroboration of the complainant's evidence. It is settled doctrine in this Court that it is "not necessary that corroborative evidence, standing alone, should establish any proposition beyond reasonable doubt" (*Doney v. The Queen* [1990] 171 CLR 207, at p. 211).

Counsel for the accused also submitted that there was no evidence which was capable of constituting corroboration. In particular, he contended that the only reasonable explanation for the lies was the accused's fear of being labelled as a "dog" (i.e. an informer) and the consequences for him in prison if he was believed to be a "dog". It was clearly open to the jury to find that this was the reason for his lie or lies. But it was not the only explanation. The motivation for the lie was a matter for the jury; it was open to them to be satisfied that the motive was "a realisation of guilt". In my opinion, there was a case to go to the jury on corroboration.

Throughout his argument, counsel for the accused made no ciritcism of Lord Lane's tests. Indeed, if I understood his argument correctly, he maintained to the end that the third of Lord Lane's tests could not be satisfied unless the jury were satisfied beyond reasonable doubt that the accused had a realisation or consciousness of guilt. In these circumstances, I do not propose to examine the correctness of Lord Lane's tests. Any examination of those tests would be best done by a Bench of all justices of the Court in a case which was a suitable vehicle for examining the whole doctrine of corroboration by lies.